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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 KIRK DOUGLAS WILLIAMS,

11 Plaintiff,

No. CIV S-08-0878 LKK GGH P

12 vs.

13 T. FELKER, et al.,

14 Defendants.

ORDER

15 \_\_\_\_\_/  
16 On September 30, 2009, the Honorable Lawrence K. Karlton granted plaintiff  
17 thirty days to file an amended complaint. Thirty days passed and plaintiff did not file an  
18 amended complaint. Accordingly, on December 9, 2009, the undersigned recommended that this  
19 action be dismissed.

20 On December 23, 2009, plaintiff filed objections to the findings and  
21 recommendations. Plaintiff alleged that he was not required to file an amended complaint  
22 because the court had not yet ruled on his request for reconsideration of the September 30, 2009,  
23 order. Attached to the objections was a copy of a motion for reconsideration of the September  
24 30, 2009, order signed by plaintiff on October 13, 2009.

25 The court did not receive plaintiff's motion for reconsideration for some unknown  
26 reason. However, in order to determine whether to deem plaintiff's motion for reconsideration

1 timely, on January 6, 2010, the court ordered plaintiff to file within fourteen days a copy of the  
2 proof of service of his motion. On January 25, 2010, plaintiff was granted an extension of time  
3 until February 8, 2010, to respond to the January 6, 2010, order.

4 On February 9, 2010, plaintiff filed a "motion for clarification" attached to which  
5 is a proof of service for the motion for reconsideration indicating that on October 15, 2009, he  
6 gave it to prison officials to mail. Good cause appearing, pursuant to the mailbox rule, plaintiff  
7 timely filed his motion for reconsideration.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The December 9, 2009, findings and recommendations are vacated;  
10 2. Plaintiff's motion for clarification (no. 52) is deemed resolved.

11 DATED: February 24, 2010

12 /s/ Gregory G. Hollows

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UNITED STATES MAGISTRATE JUDGE

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